

**RAJHEGOPAL VELU v. GANASHALINGAM RAJAH;
MAJLIS PEGUAM MALAYSIA (INTERVENER)**

COURT OF APPEAL, PUTRAJAYA
MOHD ZAWAWI SALLEH JCA
VERNON ONG LAM KIAT JCA
ABDUL RAHMAN SEBLI JCA
[CIVIL APPEAL NO: B-02(W)-452-03-2015]
4 AUGUST 2015

LEGAL PROFESSION: *Disciplinary Committee – Findings of – Complaint against advocate and solicitor on issue of fraud – Disciplinary Committee made findings that advocate and solicitor acted unprofessionally in attesting signatures on instrument of transfer – Advocate and solicitor suspended from legal practice for one year – Whether Disciplinary Committee acted outside complaint – Whether finding and recommendation of Disciplinary Committee and Disciplinary Board null and void*

By a letter of complaint addressed to the Disciplinary Committee ('DC'), the respondent lodged a complaint against the appellant for attesting a Form 14A which was not signed by one Madam Ponannah. By reason of the said attestation, the appellant had committed fraud. The DC which was appointed to hear the complaint found the appellant guilty of conduct unbefitting of an advocate and solicitor under s. 94(3)(o) of the Legal Profession Act 1976 ('LPA') and recommended that the appellant be suspended for a period of six months. However, the Disciplinary Board ('DB') imposed a greater punishment and suspended the appellant for a period of one year. The High Court dismissed the appellant's appeal against the decision of the DB on the grounds, *inter alia*, that: (i) the fact that no specific charge was preferred against the appellant was not fatal; and (ii) the word 'shall' in s. 211 of the National Land Code ('NLC') made it a mandatory requirement for the person authorised to attest a signature on an instrument of transfer to ensure that an instrument was signed before him. Hence, the present appeal.

Held (allowing appeal with no order as to costs)

Per Vernon Ong Lam Kiat JCA delivering the judgment of the court:

- (1) There was no requirement under the LPA for a charge to be framed against an advocate and solicitor. However, since the disciplinary proceedings initiated against an advocate and solicitor was serious and carry penal consequences, a charge must be precisely formulated to include the specific accusation. The appellant had the right to know and must have notice of the very nature of the charge at the first opportunity to ensure that he could be forearmed in his defence. (para 15)

- A (2) The DC was appointed to conduct an inquiry into the complaint pursuant to s. 103B of the LPA when he appellant was exonerated of the complaint of fraud against him. The finding that the appellant had acted unprofessionally in attesting the signatures in question was not the subject matter of the complaint. Therefore, the DC had acted outside the terms of power granted to it *ie*, which was to inquire into the complaint of fraud. The DC's finding that the appellant was guilty of misconduct was made for an extraneous purpose. Accordingly, the DC's decision was null and void for illegality. As the decision of the DB in imposing the suspension of one year on the appellant was founded on the DC's finding and recommendation, it must follow that the DB's decision was also null and void. (paras 17 & 18)
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Bahasa Malaysia Translation Of Headnotes

- Melalui surat aduan yang dialamatkan kepada Jawatankuasa Tatatertib ('JT'), responden telah membuat aduan terhadap perayu untuk memperakui Borang 14A yang tidak ditandatangani oleh seorang yang dikenali sebagai Madam Ponannah. Akibat perakuan tersebut, perayu telah melakukan penipuan. JT yang dilantik untuk mendengar aduan tersebut telah mendapati perayu bersalah kerana kelakuan yang tidak wajar oleh seorang peguambela dan peguamcara di bawah s. 94(3)(o) Akta Profesion Undang-Undang 1976 ('LPA') dan mengesyorkan supaya perayu digantung kerja untuk tempoh enam bulan. Walau bagaimanapun, Lembaga Tatatertib ('LT') telah mengenakan hukuman yang lebih berat dan menggantung perayu untuk tempoh satu tahun. Mahkamah Tinggi telah menolak rayuan perayu terhadap keputusan LT atas alasan, antara lain, bahawa: (i) ketiadaan pertuduhan spesifik terhadap perayu tidak memudaratkan; dan (ii) perkataan 'shall' dalam s. 211 Kanun Tanah Negara ('KTN') menjadikan satu keperluan wajib bagi seseorang yang dibenarkan untuk memperakui tandatangan pada suratcara pindah hakmilik untuk memastikan bahawa suratcara tersebut telah ditandatangani di hadapannya. Oleh itu rayuan ini.
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- G **Diputuskan (membenarkan rayuan tanpa kos)**
Oleh Vernon Ong Lam Kiat HMR menyampaikan penghakiman mahkamah:

- (1) Tiada keperluan di bawah LPA agar pertuduhan dirangkakan terhadap seorang peguambela dan peguamcara. Walau bagaimanapun, oleh kerana prosiding tatatertib yang dimulakan terhadap seorang peguambela dan peguamcara adalah serius dan membawa kesan menghukum, suatu pertuduhan harus dirumuskan dengan tepat supaya merangkumi pertuduhan spesifik. Perayu mempunyai hak untuk mengetahui dan harus mempunyai maklumat mengenai sifat pertuduhan pada peluang pertama untuk memastikan bahawa dia boleh bersedia dalam pembelaannya.
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(2) JT telah dilantik untuk menjalankan suatu siasatan mengenai aduan tersebut menurut s. 103B LPA 1976 apabila perayu dilepaskan daripada aduan penipuan terhadapnya. Dapatan bahawa perayu telah bertindak secara tidak profesional dalam memperakui tandatangan yang dipersoalkan tidak merupakan hal perkara aduan tersebut. Oleh itu, JT telah bertindak di luar bidang kuasa yang telah diberikan kepadanya iaitu untuk menyiasat aduan penipuan. Dapatan kajian JT bahawa perayu bersalah atas salah laku telah dibuat untuk tujuan yang tidak berkaitan. Berikutannya, keputusan JT adalah terbatal dan tidak sah kerana menyalahi undang-undang. Oleh kerana keputusan LT dalam mengenakan penggantungan satu tahun terhadap perayu adalah berdasarkan pada dapatan dan cadangan JT, maka keputusan LT tersebut juga tidak sah.

Case(s) referred to:

Abdullah Borhan v. Ketua Polis Melaka & Anor [2008] 9 CLJ 605 HC (*refd*)
B Surinder Singh Kanda v. The Government Of The Federation of Malaya [1962] 1 LNS 14 PC (*refd*)
Batu Malay Thandy v. Saulinardi & Anor [2015] 1 CLJ 33 CA (*refd*)
Brian Komathi @ S Komali v. Tan Kiang Bhu (Notis Usul Pemula No: 17-36-2010) (Unreported) (*refd*)
Jerald Allen Gomez v. Shencourt Sdn Bhd; Majlis Peguam (Intervenor) [2006] 1 CLJ 88 HC (*refd*)
Lim Teng Ee Joyce v. Singapore Medical Council [2005] SGHC 129 (*refd*)
R Rama Chandran v. Industrial Court Of Malaysia & Anor [1997] 1 CLJ 147 FC (*refd*)
Ranjit Kaurs S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 8 CLJ 629 (*refd*)
Saufee A Rahman v. Che Yussof Che Ngah & Ors [2014] 7 CLJ 691 CA (*refd*)

Legislation referred to:

Legal Profession Act 1976, ss. 94(3)(c), (o), 103B, 103D(1)
 National Land Code, s. 211
For the plaintiff - T Gunaseelan (Rama Velu with him); M/s Rama Velu & Assoc
For the intervener - Hoi Jack S'ng; M/s Lee Hishammuddin Allen & Gledhill
[Appeal from High Court, Shah Alam; Originating Motion No: 17D-1-05-2014]
Reported by Sandra Gabriel

JUDGMENT

Vernon Ong Lam Kiat JCA:

Introduction

[1] This appeal relates to a decision of the High Court dismissing the appellant's appeal against the decision of the disciplinary board ('the DB') given on 16 May 2014 suspending the appellant for a period of one year.

A Brief Account Of The Salient Facts

[2] By a letter of complaint dated 21 July 2013 addressed to the DB, the respondent made the following assertions ('the complaint'):

- B a) The respondent's late mother and one Mdm Poonamah were the registered owners of a piece of landed property ("the property");
- b) On or about 4 March 2002, the property was transferred to one Soo Chee Ming ('Mr. Soo') under a Form 14A purportedly signed by the respondent's late mother and Mdm Poonamah;
- C c) The signatures of the respondent's late mother and Mdm Poonamah were attested by the appellant, an advocate and solicitor;
- d) The respondent's late mother died on 10 April 1994;
- e) Mdm Poonamah did not sign the Form 14A; and
- D f) By reason of the above, the appellant has committed fraud ('penipuan').

[3] An investigating tribunal which was set up to hear the complaint recommended that there be a formal investigation by the disciplinary committee ('the DC') on the complaint.

E [4] The DC which was appointed to hear the complaint found the appellant guilty of conduct unbefitting of an advocate and solicitor under s. 94(3)(o) of the Legal Profession Act 1976 (LPA 1976) and recommended that the appellant be suspended for a period of six months.

F [5] The DB imposed a greater punishment and suspended the appellant for a period of one year.

Findings Of The High Court

G [6] In essence, the learned judge made three rulings. First, the learned judge found that the fact that no specific charge was preferred against the appellant was not fatal. It did not hamper the defence of the appellant as the appellant was aware of the complaint against him.

H [7] Second, the learned judge found that the non-calling of one Ms Abigail (an advocate and solicitor who prepared the sale and purchase agreement and the Form 14A and where attested the signature of Mr Soo) did not prejudice the appellant as the appellant did not deny attesting the two signatures in question.

I [8] Third, the learned judge found that the word "shall" in s. 211 of the National Land Code ("the NLC") makes it a mandatory requirement for the person authorised to attest a signature on an instrument of transfer to ensure that an instrument is signed before him. On the facts, the appellant had breached s. 211 of the NLC. There is no provision in the NLC which allows

for attestation based on trust and in the absence of the person executing the document. As such, the complaint was proven and the appellant had committed a disciplinary offence for which he could be disciplined.

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Submission Of Parties

[9] Learned counsel for the appellant canvassed the appeal on two main grounds. The first relates to the question of whether a charge should have been framed. The second relates to the punishment which was increased by the DB without giving any reasons.

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[10] On the first issue, it was argued that no charge was framed. On the basis of the complaint, the alleged misconduct could fall under sub-s. 94(3)(c) or (o) of the LPA 1976. However, the DC found the appellant guilty of conduct unbefitting of an advocate and solicitor under sub-s. 94(3)(o) of the LPA 1976. The appellant is only expected to answer the charge and nothing else (*Brian Komathi @ S Komali v. Tan Kiang Bhu* (unreported) Johor Bahru High Court Notis Usul Pemula No. 17-36-2010; *Abdullah Borhan v. Ketua Polis Melaka & Anor* [2008] 9 CLJ 605; *Saufee A Rahman v. Che Yussof Che Ngah & Ors* [2014] 7 CLJ 691 (CA)).

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[11] On the second issue, learned counsel for the appellant argued that the DB did not give any reasons for rejecting the recommendation of the DC when the DB imposed a punishment of suspension of one year instead of six months which was recommended by the DC (s. 103D(1) of the LPA 1976; *Batu Malay Thandy v. Saulinardi & Anor* [2015] 1 CLJ 33 (CA)).

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[12] In reply, learned counsel for the Bar Council (respondent/intervener) argued that there is no requirement for the DB to frame a charge against the appellant. The appellant was well aware of the complaint against him. The DB is not the prosecuting body. It is only facilitating the complaint to be brought before the DC.

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[13] Learned counsel for the Bar Council also argued that the only requirement is that there was no violation of the rules of natural justice. Where the DB exercises its power for which the procedures in its proceedings was not provided by law, the court will assume that in following its ad hoc procedure, it has exercised that power in a regular manner (*Jerald Allen Gomez v. Shencourt Sdn Bhd; Majlis Peguam (Intervenor)* [2006] 1 CLJ 88).

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Decision

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[14] On the first issue, it is not in dispute that no charge was framed against the appellant. In fact there is no requirement under the LPA 1976 for a charge to be framed against an advocate and solicitor.

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A [15] Be that as it may, we note that the disciplinary proceedings initiated
against an advocate and solicitor are serious and carry penal consequences
such as a fine, suspension or being struck off the Roll of Advocates and
Solicitors. Accordingly, we agree with the view in *Abdullah Borhan v. Ketua*
B *Polis Melaka & Another (supra)* that the charge in question must be precisely
formulated to include the specific accusation against the appellant who has
the right to know and must have notice of the very nature of the charge at
the first opportunity. This will enable the appellant to be forewarned with
clarity and certainty the essential elements or ingredients against him in order
to ensure that he can be forearmed in his defence for the purpose of directing
C all the evidence exclusively to the specific charge (see also the Privy
Council's opinion in *B Surinder Singh Kanda v. The Government Of The*
Federation Of Malaya [1962] 1 LNS 14; [1962] MLJ 169 (PC)). The view that
in a disciplinary process, the respondent is only required to respond to the
charge and nothing else was approved in *Lim Teng Ee Joyce v. Singapore*
Medical Council [2005] SGHC 129.

D [16] Quite apart from the abovementioned, we also noted another
significant fact. It is this. The DC had made a finding that there is insufficient
evidence to prove the appellant had intentionally participated in the alleged
fraud perpetrated on the owners of the property. In other words, the DC
E found that the complaint of fraud against the appellant has not been proven.
Therefore, the DC found the appellant not guilty of the alleged dishonest or
fraudulent conduct in the discharge of his duties under sub-s. 94(3)(c) of the
LPA 1976. Notwithstanding the said finding, the DC went on to hold that
the appellant had acted unprofessionally in attesting the signatures in
question. On that premise, the DC found the appellant guilty of misconduct
F which is unbefitting of an advocate and solicitor under sub-s. 94(3)(o) of the
LPA 1976.

[17] In this instance, the DC was appointed to conduct an inquiry into the
complaint pursuant to s. 103B of the LPA 1976. The appellant was
exonerated of the complaint of fraud against him. The finding that the
G appellant had acted unprofessionally in attesting the signatures in question
was not the subject matter of the complaint. In our view, the DC had acted
outside the terms of power granted to it; which is to inquire into the
complaint of fraud. The DC's finding that the appellant is guilty of
misconduct was made for an extraneous purpose (*R Rama Chandran v.*
H *Industrial Court Of Malaysia & Anor* [1997] 1 CLJ 147; [1997] 1 MLJ 145;
Ranjit Kaur S Gopal Singh v. Hotel Excelsior (M) Sdn Bhd [2010] 8 CLJ 629).
Accordingly, we are constrained to hold that the DC's decision is null and
void for illegality.

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[18] As the decision of the DB in imposing the suspension of one year on the appellant is founded on the DC's finding and recommendation, it must follow that the DB's decision is also null and void.

[19] For the foregoing reasons, the appeal was allowed. We made no order as to costs.

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